

★ JUN 16 2012 ★  
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EMPIRE STATE CARPENTERS WELFARE,  
PENSION, ANNUITY, APPRENTICESHIP,  
CHARITABLE TRUST, LABOR MANAGEMENT  
COOPERATION, and SCHOLARSHIP FUNDS  
and their BOARDS OF TRUSTEES,

Plaintiffs,

-against-

J.G. FLANNERY INC.,

Defendant.  
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**APPEARANCES:**

**Levy Ratner P.C.**

*Attorneys for the plaintiffs*

80 Eighth Avenue, 8<sup>th</sup> Floor

New York, NY 10011

By: Owen M. Rumelt, Esq., Of Counsel

**NO APPEARANCE:**

J.G. Flannery, Inc.

**SPATT, District Judge.**

On April 13, 2010, the plaintiffs commenced this action against J.G. Flannery, Inc. pursuant to Section 502 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1145, seeking to collect unpaid employee benefit contributions due under collective bargaining agreements entered into by the parties, as well as interest, liquidated damages, attorney's fees and costs. On March 21, 2011, the Clerk of the Court noted the default of the defendant, and on October 21, 2011, the Court referred this matter to United States Magistrate Judge E. Thomas Boyle for a recommendation as to whether the motion for a default judgment

**ORDER**  
10-CV-1631 (ADS) (ETB)

should be granted, and if so, whether damages should be awarded, including reasonable attorney's fees and costs.

On May 7, 2012, Judge Boyle issued a Report and Recommendation, recommending that the Court enter a default judgment against the defendant and award the plaintiffs damages as follows: (1) \$70,015.12 in unpaid employee benefit contributions; (2) \$67,306.96 in interest, with additional interest to be calculated at a rate of \$44.41 per day from May 7, 2012 through the date of judgment; (3) \$14,003.02 in liquidated damages; (4) audit fees in the amount of \$2,707.50; (5) \$2,702.00 in attorney's fees; and (6) \$490.83 in costs, for a total monetary award of \$157,225.43, plus additional pre-judgment interest. To date, there have been no objections filed to Judge Boyle's Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Boyle's Report and finds it to be persuasive and without any legal or factual errors.

There being no objection to Judge Boyle's Report, it is hereby

**ORDERED**, that Judge Boyle's Report and Recommendation is adopted in its entirety. The Court: (1) grants the plaintiffs' motion for a default judgment as against defendant J.G. Flannery, Inc. and (2) awards the plaintiffs damages as follows: (1) \$70,015.12 in unpaid employee benefit contributions; (2) \$67,306.96 in interest, with additional interest to be calculated at a rate of \$44.41 per day from May 7, 2012 through the date of judgment; (3)

\$14,003.02 in liquidated damages; (4) audit fees in the amount of \$2,707.50; (5) \$2,702.00 in attorney's fees; and (6) \$490.83 in costs, for a total monetary award of \$157,225.43, plus additional pre-judgment interest, and it is further

**ORDERED**, that the Clerk of the Court is directed to enter judgment in favor of the plaintiffs as set forth above, and it is further

**ORDERED**, that the Clerk of the Court is directed to close this case.

**SO ORDERED.**

Dated: Central Islip, New York  
June 16, 2012

/s Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge